

Approved February 24, 1987  
Date

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at  
Chairperson

10:07 a.m.~~xxx~~ on February 12, 1987 in room 423-S of the Capitol.

All members were present except: Senator Doyen (excused)

Committee staff present: Raney Gilliland, Legislative Research Department  
Jill Wolters, Revisor of Statutes Department

Conferees appearing before the committee: Dale Lambley, State Board of Agriculture  
Chris Wilson, Kansas Fertilizer and Chemical Association  
Bob Storey, Kansas Termite and Pest Control Association  
Vern MacKenzie, owner of pest control businesses  
Shaun McGrath, Sierra Club

Senator Allen called the Committee to order and called Committee attention to SB 74. He then called on Sam Brownback to testify.

Mr. Brownback introduced Dale Lambley to testify. Mr. Lambley gave copies of his testimony to the Committee (attachment 1). Mr. Lambley testified in favor of the bill and requested an amendment that would add the words "private applicator" between the words "for" and "certification" in line 71 of the bill.

The Chairman thanked Mr. Lambley and called on Chris Wilson.

Ms. Wilson expressed the support of the Kansas Fertilizer and Chemical Association for SB 74.

The Chairman thanked Ms. Wilson and declared the hearing closed on SB 74. He then introduced Bob Storey to testify on SB 123.

Mr. Storey introduced Vern MacKenzie to present testimony in favor of SB 123. Mr. MacKenzie gave copies of his testimony to the Committee (attachment 2). Mr. MacKenzie expressed support for the bill and requested that in the bill the word "registered" be used instead of "licensed".

Staff gave copies of a balloon draft of changes for SB 123 with the change requested by Mr. MacKenzie; that is the word "registered" used instead of the word "licensed" (attachment 3).

The Chairman called on Dale Lambley to testify.

Mr. Lambley gave copies of his testimony to the Committee (attachment 4). Mr. Lambley expressed support for SB 123 and suggested some changes, listed in his testimony, to make the proposed legislation administratively feasible.

The Chairman thanked Mr. Lambley and called on Shaun McGrath to testify.

Mr. McGrath, an opponent, gave copies of his testimony to the Committee (attachment 5).

During Committee discussion Mr. McGrath said he did not know if homes that tested contaminated by termiticides were contaminated by a pesticide or if they were contaminated by the wrong application of a pesticide. Mr. McGrath stated that new EPA requirements were going to require more training than is now required for applicators of pesticides.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,  
room 423-S, Statehouse, at 10:07 a.m./~~p.m.~~ on February 12, 1987

The Chairman thanked Mr. McGrath and turned the Committees' attention to SB 122 for action.

Senator Arasmith made a motion the Committee recommend SB 122 favorably for passage. Senator Thiessen seconded the motion. Motion carried.

The Chairman adjourned the Committee at 11:02 a.m.



T E S T I M O N Y

SENATE BILL 74

PRESENTED TO

SENATE COMMITTEE ON AGRICULTURE

by

Sam Brownback, Secretary  
Kansas State Board of Agriculture

February, 1987

*attachment 1  
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Senate Bill 74

PROPOSED AMENDMENT TO THE KANSAS PESTICIDE LAW

February, 1987

Senate Bill 74 amends the Kansas Pesticide Law and addresses the area of private applicator certification. In brief, this amendment allows establishment of reciprocity between Kansas and adjoining states so that farmers who own farm properties on both sides of the state line would not be required to take pesticide exams in both states in order to purchase restricted use pesticides. We support this amendment because the law already accords this same right to commercial pesticide applicators.

As things now stand, to be a certified private applicator, a farmer who has fields on both sides of the state line would be required to travel to the county seat in his home county in Kansas, take training and an examination from the county extension agent, then travel across the state line to the adjoining county and take a second set of training and examinations. Conversely, a Missouri farmer who owns land on both sides of the border faces similar problems. Senate Bill 74 allows a farmer in this situation to become certified in his home state and in the reciprocating state based upon the test scores in his home state.

This bill would have no fiscal impact upon the agency because the State Board of Agriculture is already involved with processing of certificates for the affected individuals. We also anticipate no adverse affects upon the private applicators. In fact, the bill should provide some benefit to them because they would not be required to go to two different places to take examinations to obtain the necessary private applicator certification.

As a final note, we have taken a second look at wording utilized in the amendment and would recommend a technical amendment to include the words "private applicator" between the words "for" and "certification" in line 0071. This amendment clarifies the situation by removing any possible confusion with commercial applicator certification.

TESTIMONY FOR SENATE  
AGRICULTURE COMMITTEE

February 12, 1987

Presented by: Vernon McKinzie

Mister Chairman: Members of the Committee: Thank you for the opportunity to appear before you.

My name is Vernon McKinzie, I am from Emporia, which is Senator Karr's District. I own pest control businesses in Emporia and Parsons. I have been in business 28 years. I am Legislative Committee chairman for the Kansas Termite and Pest Control Association, (KTPCA) a trade group representing about 150 businesses in the state. We are responsible for 80 to 90 percent of the commercial structural pest control business done annually in the state.

I am a Registered Professional Entomologist and served in 1984-85 as president of the National Pest Control Association (NPCA). Our industry is mostly composed of small family businesses throughout the country and we are responsible for use of approximately 5% of all pesticides used in the United States each year.

I am here to speak in favor of Senate Bill 123 and encourage your support for its passage. The federal Environmental Protection Agency (EPA), the regulator of pesticides on a national level, now requires certain pesticides be used by certified applicators, or under the supervision of a certified applicator.

The EPA official position on training and registration is found in the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) amendment introduced into Congress last session as House Bill 2482. H. B. 2482 reflects our concept of verifiable training and registration. The EPA has recognized the merits of training and registration in their amendment.

*attachment 2  
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Our intent as an industry is to have a workable verifiable training and registered pest control technician program in place before EPA forces some undesirable program upon us.

The KTPCA recognizes the importance of our services as protectors of Health and Property to the people of Kansas who are our customers. We provide essential services for the food processing industry, health care facilities, food service establishments, groceries and super-markets, public & private buildings and private residences. We achieve results by practicing integrated pest management techniques, which include the use of pesticides.

When pesticide applications are necessary, they are made by necessity in an environment that has been, is, or will be occupied by humans. Improper use of pesticides by untrained applicators creates unnecessary risk to persons who must use the buildings receiving treatment. Pesticide applications done properly by trained and registered technicians is safe for the occupants, the building, and the applicator. As you can recognize, our industry is unique because of the need for pesticide applications in the close proximity of people and their living and working environment.

We, the KTPCA, believe it is necessary to maintain the present Certified Applicator requirements for a business license, and the certification level of competence should be higher than the Registered Technician who will be performing repetitive service tasks in most cases. However, we perceive a need to enhance the competence of all commercial structural pesticide applicators and we believe Senate Bill 123 is a step in that direction. Many in our industry already practice training programs for their employees, and we believe this bill will not create any hardship on our industry.

A program very similar to this one has already been implemented in Arizona, Florida, Maryland, New Jersey, and Pennsylvania and is working

well in those states. The EPA, State, Federal, Issues Research Evaluation Group Certification and Training Task Force endorsed the concept of verifiable training in their August 1985 report.

So, you see, we are only trying to develop legislation now that most likely will be mandated by EPA soon. By acting now, we can enjoy the luxury of working at our own pace and developing regulations which will best serve the people of Kansas and our industry.

Kansas pest control businesses have, in my opinion, been safer than those in surrounding states. That is reflected in Pest Control liability insurance premiums being quoted at this time. The Kansas rate is 3.23% of our gross revenue, Missouri pays 5.35%, Oklahoma and Nebraska pay between 4 and 5 percent and Colorado's rate is 4.24%. These rates are based on claims made and paid as recorded by the insurance services organization. I believe this demonstrates our ability to be safe and effective, and S.B. 123 can only improve our competency. We, in Kansas, are fortunate to have had good legislation developed to govern our industry and to have the regulatory people in the Plant Health Division to do a good job implementing the legislation and encouraging our industry to become more competent and work safer.

Senate Bill 123 will enhance our capabilities and I urge your adoption of it. Thank you. Are there any questions?



**SENATE BILL No. 123**

By Committee on Agriculture

2-2

0017 AN ACT concerning agriculture; pest control technician ~~license~~ registration  
0018 requirements, fees and registration renewal; amending K.S.A.  
0019 2-2446 and 2-2467a and K.S.A. 1986 Supp. 2-2438a and re-  
0020 pealing the existing sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 1986 Supp. 2-2438a is hereby amended to  
0023 read as follows: 2-2438a. As used in this act, unless the context  
0024 otherwise requires, the following words and phrases shall have  
0025 the meanings ascribed to them in this section:

0026 (a) "Animal" means all vertebrate and invertebrate species,  
0027 including but not limited to man and other mammals, birds, fish  
0028 and shellfish.

0029 (b) "Board" means the board of agriculture of the state of  
0030 Kansas.

0031 (c) "Certified applicator" means any individual who is cer-  
0032 tified under this act to use or supervise the use of any restricted  
0033 use pesticide which is classified for restricted use by a certified  
0034 applicator.

0035 (1) "Certified commercial applicator" means a certified ap-  
0036 plicator, whether or not a private applicator with respect to some  
0037 uses, who uses or supervises the use of any pesticide which is  
0038 classified for restricted use for any purpose or on any property  
0039 other than as provided in paragraph (2) of this subsection (c).

0040 (2) "Certified private applicator" means a certified applicator  
0041 who uses or supervises the use of any pesticide which is clas-  
0042 sified for restricted use for purposes of: (A) producing any agri-  
0043 cultural commodity, (i) on property owned or rented by such  
0044 person or such person's employer or, (ii) if applied without  
0045 compensation other than trading of personal services between

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0046 producers of agricultural commodities, on the property of an-  
0047 other person; or (B) controlling ornamental shrubbery or turf  
0048 pests on property owned or rented by such person and such  
0049 property is used as such person's residence.

0050 (d) "Defoliant" means any substance or mixture of sub-  
0051 stances intended to cause the leaves or foliage to drop from a  
0052 plant, with or without causing abscission.

0053 (e) "Desiccant" means any substance or mixture of sub-  
0054 stances intended for artificially accelerating the drying of plant  
0055 tissue.

0056 (f) "Equipment" means any ground, water or aerial appa-  
0057 ratus, used to apply any pesticide but shall not include any  
0058 pressurized hand size household apparatus used to apply any  
0059 pesticide or any equipment, apparatus or contrivance of which  
0060 the person who is applying the pesticide is the source of power  
0061 or energy in making such pesticide application.

0062 (g) "Fungus" means any nonchlorophyll-bearing thal-  
0063 lophyte, including, but not limited to, rust, smut, mildew, mold,  
0064 yeast and bacteria, except those on or in man or other animals  
0065 and those on or in processed food, beverages or pharmaceuticals.

0066 (h) "General use pesticide" shall mean and include all pes-  
0067 ticides which have not been designated, by rule or regulation of  
0068 the secretary or the board, as being restricted use pesticides.

0069 (i) "Insect" means any small invertebrate animal having the  
0070 body segmented, belonging to the class insecta and other classes  
0071 of arthropods, including, but not limited to, beetles, bugs, bees,  
0072 flies, spiders, mites, ticks and centipedes.

0073 (j) ~~"Licensed pest control technician" means an uncertified~~  
0074 ~~commercial applicator who applies pesticides for wood de-~~  
0075 ~~stroying pest control or for structural pest control, or both, and~~  
0076 ~~who has received verifiable training as prescribed by the secre-~~  
0077 ~~tary.~~

0078 (k) "Nematode" means any unsegmented roundworms of  
0079 the class nematoda, with elongated, fusiform, or saclike bodies  
0080 covered with cuticle, inhabiting soil, water, plants or plant parts.  
0081 Such roundworms may also be referred to as nemas or eelworms.

0082 (l) "Person" means any individual, partnership, associa-

Registered

defined by K.S.A. 2-2443a, and amendments thereto

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0083 tion of persons, corporation or governmental agency.

0084 ~~(l)~~(m) "Pest" means, but is not limited to, any insect, rodent,  
0085 nematode, fungus, weed or any other form of terrestrial or  
0086 aquatic plant or animal life or virus, bacteria or other microorga-  
0087 nism, except viruses, bacteria or other microorganisms on or in  
0088 man or other animals, or which the secretary may declare to be a  
0089 pest.

0090 ~~(m)~~(n) "Pesticide" means, but is not limited to, (1) any  
0091 substance or mixture of substances used to prevent, destroy,  
0092 control, repel, attract or mitigate any pest and (2) any substance  
0093 or mixture of substances intended to be used as a plant regulator,  
0094 defoliant or desiccant.

0095 ~~(n)~~(o) "Pesticide business" means any individual, partner-  
0096 ship, association of persons or corporation which applies pesti-  
0097 cides to the property of another for compensation.

0098 ~~(o)~~(p) "Pesticide dealer" means any person who sells a  
0099 pesticide to another person for application.

0100 ~~(p)~~(q) "Plant regulator" means any substance or mixture of  
0101 substances intended through physiological action, to accelerate  
0102 or retard the rate of growth or maturation, or to otherwise alter  
0103 the behavior of plants but shall not include substances insofar as  
0104 they are used as plant nutrients, trace elements, nutritional  
0105 chemicals, plant inoculants or soil amendments. The term "plant  
0106 regulator" shall not include any such nutrient mixtures or soil  
0107 amendments as are commonly known as vitamin-hormone horti-  
0108 cultural products, intended for improvement, maintenance, sur-  
0109 vival, health and propagation of plants, and not for pest destruc-  
0110 tion if such mixtures or soil amendments, in the undiluted  
0111 packaged concentration are nontoxic and nonpoisonous.

0112 ~~(q)~~(r) "Restricted use pesticide" shall mean and include all  
0113 pesticide uses designated as such by rules and regulations of the  
0114 secretary or the board.

0115 ~~(r)~~(s) "Secretary" means the secretary of the state board of  
0116 agriculture.

0117 ~~(s)~~(t) "Under the supervision of" means, unless otherwise  
0118 provided by the labeling of the pesticide product, acting under  
0119 the instructions and control of another person who is available if

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0120 and when needed, even though such other person is not physi-  
0121 cally present at the time and place the act is done.

0122 ~~(t)~~ (u) "Weed" means any plant or part thereof which grows  
0123 where not wanted.

0124 New Sec. 2. It shall be unlawful for any pesticide business  
0125 employee to apply pesticides for the control of wood destroying  
0126 pests or structural pests unless that employee is a certified  
0127 commercial applicator or is a ~~licensed~~ pest control technician;

0128 Any such employee applying for a pest control technician ~~license~~  
0129 shall file an application on a form prescribed by the secretary.

0130 Application for such ~~license~~ shall be accompanied by an appli-  
0131 cation fee which is determined by rules and regulations adopted

0132 by the ~~board~~, except that such fee shall not exceed \$25. If the  
0133 secretary finds the applicant qualified to be a ~~licensed~~ pest

0134 control technician after meeting the training requirements de-  
0135 termined by the secretary in rules and regulations, the secretary

0136 shall issue a pest control technician ~~license~~ which will expire in  
0137 three years. ~~If a license is not issued as applied for, the secretary~~

0138 ~~shall inform the applicant in writing of the reasons for denial.~~  
0139 This section shall be part of and supplemental to the Kansas

0140 pesticide law.

0141 New Sec. 3. A pesticide business licensee applying pesti-  
0142 cides for the ~~public for compensation~~ shall ensure that ~~licensed~~

0143 pest control technicians who handle, mix or apply pesticides ~~or~~  
0144 ~~pesticide contaminated materials~~ have been trained as provided

0145 in this act. The pesticide business licensee shall notify the  
0146 secretary ~~within 15 working days of the employment of a li-~~

0147 ~~icensed~~ pest control technician or a person to be trained as a  
0148 ~~licensed~~ pest control technician. The pesticide business licensee

0149 shall ensure that all persons who are not registered technicians  
0150 meet the requirements of this act within 30 days. Any ~~transportation,~~

0151 ~~handling or application of pesticides, pesticide contami-~~  
0152 ~~nated equipment or pesticide contaminated containers by a~~

0153 ~~trainee~~ shall be done when either a certified applicator or ~~li-~~  
0154 ~~icensed~~ pest control technician is physically present. This section

0155 shall be part of and supplemental to the Kansas pesticide law.  
0156 Sec. 4. K.S.A. 2-2446 is hereby amended to read as follows:

registered

, except that an uncertified commercial appli-  
cator may apply pesticides when either a  
certified applicator or registered pest control  
technician is physically present

registration

secretary

registered

registration

control of wood destroying pests or structural  
pests

registered

by the 10th of the month following the date of  
employment of the employment of a registered

registered

application of pesticides by an uncertified  
commercial applicator

registered

0157 2-2446. (a) A commercial applicator's certification may be re-  
 0158 newed for a succeeding three-year period by paying the fees  
 0159 prescribed in K.S.A. 2-2441a, *and amendments thereto*, passing  
 0160 the examination provided for in K.S.A. 2-2443a, *and amendments*  
 0161 *thereto*, and completing the renewal application form prescribed  
 0162 by the secretary. In lieu of such examination, the secretary may  
 0163 accept attendance and satisfactory completion of a training  
 0164 course approved by the secretary.

0165 (b) A private applicator's certification may be renewed for a  
 0166 succeeding five-year period by paying the fee prescribed in  
 0167 K.S.A. 2-2445a, and amendments thereto, passing the examina-  
 0168 tion provided for in K.S.A. 2-2445a, and amendments thereto,  
 0169 and completing the renewal application form prescribed by the  
 0170 secretary. Such examination shall be offered by the board by  
 0171 mail. County extension agricultural meetings shall include per-  
 0172 tinent pesticide information for private applicators.

0173 (c) ~~A pest control technician's license~~ may be renewed for a  
 0174 succeeding three-year period by paying the fees prescribed in  
 0175 section 2, meeting any requirements determined by the secre-  
 0176 tary through rules and regulations, and completing the renewal  
 0177 form prescribed by the secretary.

0178 Sec. 5. K.S.A. 2-2467a is hereby amended to read as follows:  
 0179 2-2467a. The secretary is hereby authorized to promulgate and  
 0180 adopt rules and regulations for the administration of this act and  
 0181 concerning the following matters which include but are not  
 0182 limited to:

0183 (a) The designation of certain pesticides as restricted use  
 0184 pesticides as provided in K.S.A. 2-2439, *and amendments*  
 0185 *thereto*;

0186 (b) the designation of categories for the issuance of pesticide  
 0187 business licenses as provided in K.S.A. 1976 Supp. ~~2-2444~~, *and*  
 0188 *amendments thereto*;

0189 (c) the designation of categories for the certification of appli-  
 0190 cators as provided in K.S.A. 1976 Supp. ~~2-2444~~, *and amendments*  
 0191 *thereto*;

0192 (d) *the designation of training requirements for those per-*  
 0193 *sons applying for a pest control technician's license* as provided

registration

2-2444a

registration

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0194 in section 2;

0195 (d) (e) the registration and identification of equipment used  
0196 in the commercial application of pesticides as provided in K.S.A.

0197 2-2456, and amendments thereto;

0198 (e) (f) the storing and discarding of pesticides and pesticide  
0199 containers;

0200 (f) (g) proper health and safety precautions;

0201 (g) (h) proof of financial responsibility including acceptable  
0202 surety bond or liability insurance coverage; and

0203 (h) (i) furnishing of reports and information necessary for the  
0204 secretary to carry out the provisions of this act.

0205 Sec. 6. K.S.A. 2-2446 and 2-2467a and K.S.A. 1986 Supp.  
0206 2-2438a are hereby repealed.

0207 Sec. 7. This act shall take effect and be in force from and  
0208 after its publication in the statute book.

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**T E S T I M O N Y**

**Senate Bill 123**

**PRESENTED TO**

**SENATE COMMITTEE ON AGRICULTURE**

by

Dale Lambley, Director  
Kansas State Board of Agriculture  
Plant Health Division

February, 1987

*attachment 4  
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Senate Bill 123

PROPOSED AMENDMENT TO THE KANSAS PESTICIDE LAW

February, 1987

The Kansas Termite and Pest Control Association seeks to insure that technicians who actually perform pest control services and pesticide applications are properly trained. They recognize that lack of proper training leads to improper pest control procedures, and in some instances, to misuse of pesticides.

This Association has particular cause for concern because the pesticide applications are made by its members in homes, restaurants and similar establishments where the potential hazards to human health caused by misapplication are substantial.

There has also been one recent federal development which relates to the subject matter of the bill. On January 28, 1987, the U.S. Environmental Protection Agency released a press advisory concerning the use of chlordane and some other termiticides. It provides in pertinent part:

"Under registration standards issued earlier this month, EPA is asking registrants to modify their labels to restrict to certified applicators the sale and use of the termiticides chlordane, heptachlor and aldrin. The agency (EPA) took this action to minimize exposure to applicators and occupants of structures treated with these three products while it continues to evaluate the associated potential human health risks to determine whether additional action may be warranted. Under the restricted use classification, application of these products must be made in the actual physical presence of a certified applicator. If the certified applicator is not physically present at the site, each uncertified applicator must have completed a state approved training course in termiticide application that meets minimal EPA training requirements and be licensed in the state in which he is working."

The Kansas State Board of Agriculture has indicated to the Association that we agree with the need for technician training. However, Senate Bill 123 needs some modification to be made administratively feasible.



- a. There needs to be a mechanism whereby the pesticide business licensee is required to keep adequate records to verify who has been trained and whereby the agency can audit these records;
- b. the three-year registration period needs a definite starting and ending date;
- c. there needs to be language, such as contained in K.S.A. 2-2443(a), to establish the type of training required;
- d. there needs to be a decision regarding whether the registered pest control technician license goes with the individual if the individual changes employers;
- e. there needs to be a mechanism for submission of training materials to the agency to verify that the materials meet agency standards;
- f. the agency wants to insure that fee funding is sufficient for operation of this program.

The agency is, of course, quite willing to work with the Association in clarification of these areas.

To: Senate Agriculture Committee  
From: Shaun McGrath, Sierra Club  
Re: Opposition to SB123

The Sierra Club opposes SB 123 because better protection would be given by the current law. We do support, however, the requirement of training and certification for every commercial pesticide applicator. We also urge this committee to consider whether public health protection might be improved in other ways.

EPA has just issued a registration standard for the chlorinated hydrocarbon termiticides (chlordane, heptachlor, and aldrin). This regulation requires that these termiticides may be sold to and used only in the physical presence of a certified pesticide applicator, unless the applicator is trained and registered under a program certified by the state as adequate. In the registration standard, EPA established minimum standards for such training. These are not spelled out in SB 123, as certification requirements are in the Kansas Pesticide Law (KSA 2-2443a), but they include the same general requirements as commercial certification, along with some topics specific to structural pest control.

If current commercial applicator training does not include some of these topics, then certainly it should be improved. However, the best way to ensure that all homeowners receive equal protection from misuse is to require all commercial applicators to be certified. However, due to EPA's registration standard, failing to pass this bill will have that effect for most termite applications.

In considering the question of whether the state should take further action to protect citizens from exposure to termiticides, this committee should be aware of the events that led EPA to issue its registration standard. In response to accumulating reports in the legal, medical, and regulatory literature that associate nausea, severe headaches, fatigue, depression, aggression, immune system dysfunction, aplastic anemia, and leukemia with its use, two states (Massachusetts and New York), as well as Japan, the European Economic Community, Finland, Turkey, and Sweden, have banned chlordane, the most commonly used termiticide. Other states are now considering legislation to ban chlordane (Maryland, Michigan, at least one other). A clearinghouse has been established by Trial Lawyers for Public Justice and the National Coalition Against the Misuse of Pesticides to aid attorneys seeking to recover damages resulting from chlordane--one such attorney recovered \$625,000 in damages from Orkin last year.

Millions of American homes are treated or retreated every year, and most of those treated according to label directions are contaminated with detectable residues of chlordane. The state of New York performed air tests on 1400 homes and found that 10 percent were contaminated at levels at which the National Academy of Sciences recommends instant evacuation. Decontamination is practically impossible, and homes across the country have been abandoned, condemned, or demolished following contamination with termiticides. Therefore, although we oppose this bill, we urge you to consider alternative approaches.

*attachment 5*  
*Senate agriculture*  
*2-12-87*